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DEC 21 1979
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APPENDIX

In The Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-81

THOMAS E. COFFY, PETITIONER

v.

REPUBLIC STEEL CORPORATION

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR CERTIORARI FILED JULY 16, 1979
CERTIORARI GRANTED OCTOBER 29, 1979

In The Supreme Court of the United States

OCTOBER TERM 1979

No. 79-81

THOMAS E. COFFY, PETITIONER

v.

REPUBLIC STEEL CORPORATION

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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DATE	PROCEEDINGS
3/13/74	Complaint filed. Summons issued to U.S. Marshal.
3/20/74	Summons retn. & filed. Served deft. through David Schryver on 3/18/74. Fees $3.00
4/9/74	Answer of defendant filed. Copy mailed 4/8/74.
11/15/74	Letter from atty. French re: discovery filed.
4/22/75	Stipulation of facts of U.S.A. filed.
4/22/75	Motion for summary judgment by pltf. filed. Copy mailed 4/23/75.
5/8/75	Motion of deft. for summary judgment with memorandum in support filed. Copy mailed 5/7/75.
5/16/75	Memorandum of pltf. in opposition to deft.'s motion for summary judgment filed. Copy mailed 5/16/75.
6/4/75	Motion of deft. for leave to file reply brief filed. Copy mailed 6/4/75.
6/6/75	Endorsed order granting motion of deft. for leave to file reply brief. Thomas, J. Copies mailed.
6/6/75	Reply Brief of deft. in support of motion for summary judgment filed. Copy mailed.
6/26/75	Minutes of proceedings filed. Thomas, J. Kraemer, R. Further hearing set on 7/1/75 at 9:30 a.m.
7/31/75	Minutes of proceedings filed. Thomas, J. Czompoly, R. Evidentiary hrg. begun; final arguments made; ruling reserved for written opinion.
8/29/75	Memorandum and Order granting judgment in favor of the defendant and against the plaintiff filed. Thomas, J. Copies to Nims, Schwarzwald, Taylor & Diggs.
8/29/75	Order dismissing the complaint, with prejudice, at plaintiff's costs filed. Thomas, J. Copies to Nims, Schwarzwald, Taylor & Diggs.
9/10/75	Motion of pltf. for reconsideration with memorandum in support filed. Copy mailed 9/10/75.
9/18/75	Response of deft. to motion for reconsideration filed. Copy mailed 9/18/75.

9/29/75	Memorandum and Order denying motion of deft. for reconsideration filed. Thomas, J. Copies to counsel.
10/28/75	Notice of Appeal by pltf. filed. Copy by Clerk to DeMarco & French.
11/12/75	Motion of pltf. for an extension of time for filing notice of appeal with memorandum in support filed. Copy mailed 11/12/75.
11/12/75	Order extending the time for the government to file a notice of appeal until 10/28/75, on which date the notice of appeal was filed, filed. Thomas, J. Copies to Nims & French.
12/9/75	Order extending time for transmittal of the record to the U.S. Court of Appeals until 1/26/76 filed. Thomas, J. Copy to Franch, DeMarco & court reporter.
1/19/76	Transcript of proceedings before Thomas, J. on 7/31/75 filed. Czompoly, R.
1/19/76	Certified original pleadings mailed to U.S. Court of Appeals.
2/12/76	Record filed in U.S.C.A. on 2/11/76. No. 76-1160.
9/6/77	True copy of USCA order vacating judgment of District Court and remanding cause for consideration in the light of Alabama Power Co. v. Davis. filed. issued as mandate: 9/6/77 costs $1,008.88
10/14/77	Minutes of pre-trial proceedings filed. Thomas, J. Czompoly, r. (gov't. to file brief within 30 days; deft. within 15 days of gov't. reply brief of gov't within 7 days)
12/15/77	Supplemental brief of deft. filed. copy mailed 12/15/77
11/21/77	Supplemental brief of pltf. filed. copy mailed 11/21/77
3/15/78	Memorandum and order granting judgment in favor of the deft. and against the pltf. filed. Thomas, J. copies issued 3/16/78

3/15/78	Order dismissing complaint with prejudice, at pltfs. costs filed. Thomas, J. copies issued 3/16/78
4/11/78	NOTICE OF APPEAL by pltf. filed. Re: 3/15/78 Copies issued 4/14/78
5/12/78	CERTIFIED RECORD forwarded to the U.S.C.A.
5/30/78	ACKNOWLEDGMENT OF RECORDS RECEIVED in the U.S.C.A. & filed. (5/24/78) (#78-3266)
3/2/79	CERTIFIED COPY OF ORDER affirming the Judgment of the District Court filed. Before Weick and Celebrezze, Circuit Judges, and Peck, Senior Circuit Judge. Issued as Mandate: 2/28/79. Costs: None. RECORD RETURNED.
11/7/79	CERTIFIED ORIGINAL Pleadings mailed to Clerk, U.S. Supreme Court Washington, D.C. re: per instructions from U.S.C.A. this date

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Civil Action File No. C 74-217
(Judge Thomas)

THOMAS E. COFFY, PLAINTIFF,

v.

REPUBLIC STEEL CORPORATION, DEFENDANT.

COMPLAINT

I

This is an action under Section 9 of the Military Selective Service Act of 1967, as amended (50 U.S.C.A. App. 459), hereinafter called the Act, and jurisdiction is vested in this Court pursuant thereto.

II

Defendant is a corporation and is now and at all times hereinafter mentioned was engaged in the manufacturing of iron, steel, and iron and steel products, at a place of business in Cleveland, Ohio, within the jurisdiction of this Court.

III

Plaintiff Thomas E. Coffy was first employed by defendant on April 30, 1968, as a crane Operator, a position other than temporary within the meaning of the Act.

IV

Plaintiff was laid off from his employment on September 7, 1968 and he subsequently terminated his employment. On January 30, 1969, plaintiff was reemployed. Plaintiff entered military service on September 9, 1969 and was honorably dischrged on August 16, 1971.

V

Plaintiff made timely application to defendant for reinstatement of his employment on September 10, 1971, within the time allowed by the Act and in satisfaction of all other qualifications for statutory re-employment rights under the Act. The defendant, at the time of plaintiff's application for reinstatement, was laying off employees, and had passed plaintiff's seniority date. The veteran was reinstated in a layoff status and was recalled in August, 1972.

VI

Except for plaintiff's military service, he would have been entitled to 52 credit units of Supplemental Unemployment Benefits (hereinafter S.U.B.) during the period he was laid off, which was from September 10, 1971 to August, 1972. Defendant failed and refused to grant plaintiff the S.U.B. due him and paid plaintiff benefits for only six (6) months, in violation of Sections 9(B)(i) and 9(C)(2) of the Act.

WHEREFORE, plaintiff prays that defendant be ordered to compensate him for the benefits due him as expressed by the difference between the number of credits he was paid and the amount he would have received if his account had been fully credited; and that he be granted such other and further relief as the Court may deem appropriate.

FREDERICK M. COLEMAN
United States Attorney

By _____
Richard J. French
Assistant United States Attorney

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Case No. 74-217
(Judge Thomas)

THOMAS E. COFFY, PLAINTIFF

v.

REPUBLIC STEEL CORPORATION, DEFENDANT

ANSWER OF DEFENDANT
REPUBLIC STEEL CORPORATION

For its answer to the complaint, defendant Republic Steel Corporation:

1. Admits that plaintiff purports to bring this action as stated in paragraph 1 of the complaint, and admits that this Court has jurisdiction in this matter.

2. Admits the averments of paragraphs 2 and 3 of the complaint.

3. Admits that plaintiff was laid off on September 17, 1968, and that he subsequently terminated his employment, voluntarily leaving the employ of defendant on November 18, 1968; states that plaintiff was reemployed by defendant on January 24, 1969, and that he went on military leave effective September 9, 1969; states that it is without information or knowledge sufficient to form a belief as to whether plaintiff was honorably discharged from military service on August 16, 1971.

4. States that plaintiff made application to return to employment with defendant on September 14, 1971, admits that plaintiff was placed on a layoff status as required by his seniority date, including credit for time spent in military service, and states that plaintiff returned to work on July 1, 1972; states that it is without information or knowledge sufficient to form a belief as to whether plaintiff satisfied all qualifications for statutory reemployment rights under the Act.

5. Denies the averments of paragraph 6 of the complaint, and states that plaintiff was paid all S.U.B. benefits due him under the express language of the S.U.B. Plan, and further states that such Plan is not in violation of the Act.

6. Except as expressly admitted above, denies the remaining averments of the complaint.

WHEREFORE, having fully answered, defendant Republic Steel Corporation prays that the complaint be dismissed and that it be permitted to go hence without cost.

Victor E. DeMarco
Michael A. Nims

Jones, Day, Cockley & Reavis
1750 Union Commerce Building
Cleveland, Ohio 44115
696-3939

Attorneys for Defendant
Republic Steel Corporation

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Civil Action No. C 74-217

THOMAS E. COFFY, PLAINTIFF

v.

REPUBLIC STEEL CORPORATION, DEFENDANT

STIPULATION

Now come the respective parties to this action and hereby stipulate the following facts:

1. Mr. Coffy was employed by Republic Steel from April 30, 1968, until September 17, 1968, at which time he was laid off, and subsequently quit of his own free will.

2. Mr. Coffy was again employed by Republic Steel as a crane operator from January 24, 1969, until his entry into the military service on September 9, 1969.

3. Mr. Coffy served in the military from September 9, 1969, until August 16, 1971, and was honorably discharged.

4. Mr. Coffy applied for reinstatement on September 14, 1971.

5. Republic Steel does not question Mr. Coffy's entitlement to reemployment rights.

6. At the time Mr. Coffy applied for reinstatement, Republic Steel was in the process of laying off employees and had passed Mr. Coffy's seniority date.

7. Under the escalator principle Mr. Coffy was reinstated in layoff status and was eventually recalled to work on July 1, 1972. Mr. Coffy received S.U.B. pay benefits from Republic Steel for approximately six months (approximately 25 credits.)

8. Republic Steel erroneously credited Mr. Coffy's previous employment in 1968 for S.U.B. purposes and as a result is currently deducting $20 per pay period to recover the approximate $322 of benefits (approximately 9 credits) he [was] allegedly overpaid.

9. There is a collective bargaining agreement between Republic Steel and the United Steelworkers of America which covers the period between August 1, 1971, and August 1, 1974. There was a similar agreement covering August 1, 1969, to August 1, 1971. Article XVIII—Supplemental Unemployment Benefits Program, Section 1—Description of Plan states the "Supplemental Unemployment Benefit Plan effective January 1, 1969 (the Plan) is contained in a booklet entitled "1969 Supplemental Unemployment Benefit Plan," a copy of which will be provided each employee. Such booklet constitutes a part of this Article Eighteen as though incorporated herein. Effective for weeks ending on or after August 1, 1971, each of the amounts shown in Paragraph 1.4 of such booklet shall be increased by $30.00.

Section 2

Coverage

A. The Plan shall, for the period specified in the termination provisions of this Agreement, be applicable to the employees (together with other employees represented by the Union).

10. There exists a Supplement Unemployment Benefit plan booklet effective January 1, 1969, referred to in Article Eighteen of the aforementioned contract. This booklet contains the provisions of the plan and states in part:

Duration of Weekly Benefits—The number of weeks for which an employee may receive Weekly Benefits depends on his number of credit units. An employee will be credited with the balance of his credit units as of December 31, 1968, under the Prior Plan, plus one-half a credit unit for each week thereafter in which he has any of the following hours:

a. Hours worked for the Company.

b. Hours not worked but for which he is paid, such as vacation hours or hours for which he received jury allowance.

c. Hours not worked and not paid for but which were lost because:

(1) He was performing his duties as a member of the Grievance Committee, or President, Vice-President, Recording-Secretary and/or Treasurer of a Local of

the Union which is his collective bargaining representative, or

(2) He was absent because of a disability for which benefits are payable under a Workmen's Compensation or Occupational Disease law or the Company Program of Insurance Benefits.

However, an employee will not receive credit for weeks occuring when he has 52 credit units, which is the maximum number he may have.

Cancellation of Credit Units—An employee cannot receive any Weekly Benefit unless he has one or some fraction of a credit unit. If he has less than required to be cancelled as described in 2.3, be will receive a reduced benefit in proportion to his credit unit balance.

Normally one credit unit is cancelled for each Weekly Benefit paid. However, if a Weekly Benefit is reduced because of the receipt of other compensation (other than from the Company) only one-half credit unit will be cancelled for that Weekly Benefit.

Credit units will be cancelled whenever an employee incurs a break in continuous service. He will, therefore, not be entitled to coverage by, or benefits from, the Plan. However, any individual whose break in continuous service is removed shall have restored any credit units cancelled as a result of such break.

Eligibility for Weekly Benefits

Requirements—In order to be eligible for a Weekly Benefit, an employee must be in layoff (as defined in 3.10) which occurred in a reduction in force or as a result of the permanent shutdown of a plant, department or subdivision thereof; he must have completed two years of continuous service prior to his layoff; and he must

b. Receive a state unemployment benefit for the week. However, this requirement will not apply if he fails to receive that benefit only for one or more of the following reasons:

(1) He has exhausted his state unemployment benefits.

Disqualification—An employee will be disqualified from receiving a Weekly Benefit if:

a. He quit, or

b. He was suspended or discharged, or

c. His unemployment was a consequence of:

(1) any strike, slowdown, work stoppage, picketing or concerted action involving persons employed by the Company and covered by the Plan or members of a union which is the collective bargaining agent of the applicant, whether at any operation of the company or elsewhere.

Ineligibility—An employee may not receive a Weekly Benefit for any week when he is in the Military service, including training encampments.

Military Service—If an employee enters the armed services directly from the employment of the Company, he shall, while in service, be deemed for the purpose of the Plan to be on leave of absence and shall not be entitled to any Benefit. Only the credit units credited to him at the time of his entry into such service shall be credited to him upon his reinstatement as an employee of the Company with unbroken continuous service, except as may otherwise be required by law. (Exhibit AA)

11. It is agreed that Mr. Coffy would have been entitled to 52 S.U.B. credits at the time of his layoff except for his military service.

FREDERICK M. COLEMAN
UNITED STATES ATTORNEY

By _____
RICHARD J. FRENCH
ASSISTANT U.S. ATTORNEY

APPROVED BY:

_____
MICHAEL NIMS
ATTORNEY FOR DEFENDANT

[2]

FOREWORD

This booklet contains the 1969 Supplemental Unemployment Benefit Plan applicable to employees identified on the cover. This plan is intended to supplement state system unemployment benefits, and not to replace or duplicate them, and to provide other benefits related to unemployment.

The Plan was first established August 3, 1956 and has since been revised, the latest revision being effective January 1, 1969. This Plan, as so revised, applies to all weeks ending after December 31, 1968.

It is essential that each covered employee study this booklet so that he will understand how its provisions affect him. IT IS MOST IMPORTANT THAT HE READ THE PROVISIONS ON PAGES 11 through 15 so that he will make timely application and take other action necessary to qualify for benefits to which he believes he is eligible. He should also read the disputes provisions starting on page 18 so that he will take the proper steps in the event he disagrees with a determination under the Plan.

[3]

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[5]

DEFINITIONS

When used in this Plan or any agreement relating thereto, the following terms are intended to have the meanings set forth below:

"Benefit": Unless qualified in the text, a Weekly Benefit, Short Week Benefit or relocation allowance.

"Benefit year": The period used in the applicable state system in connection with establishing the amount and duration of state unemployment benefits, usually also called a "benefit year" under the state system. If no such period is in effect, another period will be used for purposes of the Plan. In the case of an employee who during a continuous layoff ends a state benefit year and cannot start a new one, his existing benefit year shall be extended until he is able to start such new state benefit year or returns to work.

"Company Program of Insurance Benefits": Any program providing insurance coverage for employees as to which the Company contributes all or some portion of the cost.

"Company": The Company named on the cover of this booklet, or any subsidiary or associated company having employees who are covered by the Plan.

"Continuous service": The continuous service of an employee as determined for pension purposes under the Company's noncontributory pension plan.

"Dependent": Any person, other than the employee, but including his or her spouse, for whom the employee is entitled to claim an exemption under the federal Internal Revenue Code or similar law, for federal income tax purposes.

"Fund": The SUB Plan trust fund.

"Other compensation": Any compensation received by the employee as wages or other remuneration from any employer or from self-employment.

[6] "Part-time employee": An employee who regularly, for his own convenience, is not available for full-time employment.

"Plan": The 1969 Supplemental Unemployment Benefit Plan set forth in this booklet.

"Prior Plan": The Supplemental Unemployment Benefit Plan in effect prior to January 1, 1969.

"Short Week Benefit": The amount of benefit payable to an employee for a week during which he works some, but less than 32, hours for the Company.

"State system": Any system or program, now in effect or hereafter established by or pursuant to any federal or state law or laws, for paying benefits to persons on account of their unemployment, under which the eligibility of a person for benefit payments is not determined by application of a means test. It is usually referred to as the state unemployment compensation system, but it may be a federal program such as that established under the Manpower Development and Training Act.

"State unemployment benefit": A benefit payable under a state system.

"Week": The period used for determing state unemployment benefits under the applicable state system, or, where no such period is established, an equivalent period used to determine eligibility for and the amount of a Weekly Benefit, unless it is clear in this Plan that it is intended to refer to a calendar week. With respect to Short Week Benefits and the determination of Credit Units, "week" means the payroll week.

"Weekly Benefit": The amount of supplemental unemployment benefit payable under the Plan for a week of layoff.

[7]

1969 Supplemental Unemployment Benefit Plan

This Plan is designed to provide a covered employee who becomes wholly or partially unemployed Weekly Benefits to provide income while he is on layoff and Short Week Benefits for any week in which he works some, but less than 32, hours for the Company. Relocation allowances are also provided for certain changes of residence required to enable laid-off employees to accept interplant job opportunities with the Company.

1. AMOUNT OF WEEKLY BENEFITS

Calculating the Benefit

1.0 The Weekly Benefit provided for a week of layoff is 26 times the employee's average straight-time hourly earnings plus $1.50 for each of not more than four dependents, subject to:

a. The deductions set forth in 1.3,

b. The maximums set forth in 1.4, and

c. Possible reduction as provided in 1.5.

1.1 The term "average straight-time hourly earnings" for the purposes of the Plan means (a) such earnings as calculated under the Prior Plan or (b) for benefit years starting after December 31, 1968, the hourly earnings which would apply if the first week for which a Weekly Benefit is payable in the benefit year were a week of vacation, adjusted to exclude the effect of overtime and Sunday premiums. Such hourly earnings shall not be changed during a benefit year except to reflect the effect of any intervening general wage change.

1.2 The number of dependents utilized in the calculation of the Weekly Benefit will be one less than the number of persons for whom the employee is claiming exemption at the time for federal income tax withholding purposes. An employee may at any time file a new Form W-4 to reflect not more than the actual number of his exemptions.

[8] *State Benefit and Other Income*

1.3 There is deducted from the amount determined in accordance with 1.0:

a. The amount of any state unemployment benefit, including any dependency allowance, received for the same week, and

b. The amount of other compensation for the week in excess of the amount disregarded in determining the amount of state unemployment benefit.

Weekly Benefit Payable—Maximums

1.4 The Weekly Benefit the employee will receive is (unless 1.5 applies) the amount determined by the steps described in 1.0 through 1.3 or one of the following maximums, if lower:

a. For any week for which he receives a state unemployment benefit, the maximum is determined from the following table based on the number of his dependents:

None	*One*	*Two*	*Three*	*Four or More*
$52.50	$54.00	$55.50	57.00	$58.50

These maximums shall also apply to any week for which the only reason for an employee's not receiving a state unemployment benefit is the amount of other compensation he is receiving or because he had earlier received state unemployment benefits in the same benefit year for weeks as to which he was not eligible to receive Weekly or Short Week Benefits.

b. For all other weeks the maximum is determined from the following table based on the number of his dependents:

None	*One*	*Two*	*Three*	*Four or More*
$80.00	$81.50	$83.00	$84.50	$86.00

Possible Reduction of Weekly Benefits

1.5 A percentage figure representing the financial position of the Plan will be calculated for each month, as described in 5.1, and will [9] determine whether the Weekly Benefits for each week ending in the month

are to be reduced. For any month when this percentage is 35% or higher, the Weekly Benefit will be paid in the amount determined by 1.0 through 1.4. When it falls below 35%, the Weekly Benefit will be reduced to the percentage of such amount indicated in the following table:

When the Financial Position Is:	*The Percentage Is:*
25% or more but less than 35%	60%
15% or more but less than 25%	30%

When the financial position of the Plan is less than 15%, no Weekly Benefits will be paid.

2. DURATION OF WEEKLY BENEFITS

Credit Units

2.0 The number of weeks for which an employee may receive Weekly Benefits depends on his number of credit units. An employee will be credited with the balance of his credit units as of December 31, 1968, under the Prior Plan, plus one-half a credit unit for each week thereafter in which he has any of the following hours:

a. Hours worked for the Company,

b. Hours not worked but for which he is paid, such as vacation hours or hours for which he received jury allowance,

c. Hours not worked and not paid for but which were lost because:

(1) He was performing his duties as a member of the Grievance Committee, or President, Vice-President, Recording Secretary, Financial Secretary and/or Treasurer of a Local of the Union which is his collecting bargaining representative, or

[10] (2) He was absent because of disability for which benefits are payable under a Workmen's Compensation or Occupational Disease law or the Company Program of Insurance Benefits.

However, an employee will not receive credit for weeks occurring when he has 52 credit units, which is the maximum number he may have.

2.1 In the case of an employee employed on a Great Lakes vessel, credit units will be credited at seven-tenths per week instead of one-half per week but not more than 26 credit units shall be credited to him for any one calendar year.

Cancellation of Credit Units

2.2 An employee cannot receive any Weekly Benefit unless he has one or some fraction of a credit unit. If he has less than required to be cancelled as described in 2.3 he will receive a reduced benefit in proportion to his credit unit balance.

2.3 Normally one credit unit is cancelled for each Weekly Benefit paid. However, if a Weekly Benefit is reduced because of the receipt of other compensation (other than from the Company) only one-half credit unit will be cancelled for that Weekly Benefit.

2.4 If an employee willfully falsifies, or willfully withholds, any records or other data on which his Weekly Benefit payments are based, the Company may cancel any or all of his credit units.

2.5 Credit units will be cancelled whenever an employee incurs a break in continuous service. He will, thereafter, not be entitled to coverage by, or benefits from the Plan. However, any individual whose break in continuous service is removed shall have restored any credit units cancelled as a result of such break.

[11] 3. ELIGIBILITY FOR WEEKLY BENEFITS

Requirements

3.0 In order to be eligible for a Weekly Benefit, an employee must be on a layoff (as defined in 3.10) which occurred in a reduction in force or as a result of the permanent shutdown of a plant, department or subdivision thereof; he must have completed two years of continuous service prior to his layoff; and he must:

a. Report and apply in person in the week for which he is claiming a Weekly Benefit at a time and place designated by the Company. The place at which reporting and applying are required will be at or near the location where the employee was last employed. If such place is an unreasonable distance from the employee's residence, or if he leaves the area to seek work, the Company shall, upon request of the employee in person, grant permission to report at another Company location where an adequate office for such reporting is maintained. If no such office is within reasonable distance, the Company shall, upon request of the employee in person, grant permission to report and apply by mail. An employee applying for a Weekly Benefit pursuant to 3.1 may report and apply by mail. The necessary forms and instructions for making SUB applications by mail shall be supplied by the Company to the employee at the time his request for mail reporting is granted.

b. Receive a state unemployment benefit for the week. However, this requirement will not apply if he fails to receive that benefit only for one or more of the following reasons:

(1) He has exhausted his state unemployment benefits.

(2) He has other compensation in an amount which disqualifies him for a state unemployment benefit.

(3) He has not had sufficient employment to be covered under the state system.

(4) He is unable to work by reason of disability. (See 3.1.)

[12] (5) He is participating in a federal training program. (See 3.4.)

(6) He was laid off during a plant vacation shutdown and he was not entitled to vacation during the shutdown.

(7) He is an employee who was laid off from employment on a Great Lakes vessel and the week falls in a period of state system seasonal disqualification applicable to such an employee.

No employee shall receive a Weekly Benefit until he shows that he received a state unemployment benefit for the week or failed to receive such benefit for a reason which does not disqualify him from receiving a Weekly Benefit. This may be done by showing a state check or by some other method, which must reasonably provide for securing such proof. Examples of such methods are described in 7.10. If (7) above applies, the employee must comply with special administrative regulations of the Company, as to which he will be fully advised, necessitated by the greater difficulty of determining whether he is unemployed and qualified for benefits than would be the case if he were not under a state system seasonal disqualification.

c. Be available for work, and maintain an active registration with the state employment service. These requirements will be considered to have been met for any week for which the employee receives a state unemployment benefit.

d. Apply for, accept and not voluntarily leave employment with other employers as specified by the Company or otherwise, if the employment is considered suitable under the state system. This requirement will be considered to have been met for any week for which the employee receives a state unemployment benefit.

Disability

3.1 An employee who fails to receive a state unemployment benefit because he is not physically able to work shall receive a Weekly Benefit if he is otherwise entitled and if:

[13] a. He became disabled while on layoff and after sickness and accident coverage ceased under the Company Program of Insurance Benefits, and

b. He supplies the same certification of disability as would be required for sickness and accident benefits if such coverage had not ceased.

3.2 Any disability benefit paid under or pursuant to state or federal law with respect to the period for which a Weekly Benefit is paid under 3.1 shall for the purposes of 1.3 and 1.4 be considered to be a state unemployment benefit.

3.3 An employee will not be disqualified from a Weekly Benefit on the basis that he is not "on layoff" if he is recalled from layoff and is not physically able to perform the job to which recalled.

Federal Training Programs

3.4 If an employee does not receive a state unemployment benefit solely because he is participating in a training program established under or pursuant to federal law, he shall be entitled to a Weekly Benefit if otherwise eligible. In such case any income received by him under that program is a state unemployment benefit.

Disqualification

3.5 An employee will be disqualified from receiving a Weekly Benefit if:

a. He quit, or

b. He was suspended or discharged, or

c. His unemployment was a consequence of:

(1) any strike, slowdown, work stoppage, picketing or concerted action involving persons employed by the Company and covered by the Plan or members of a union which is the collective bargaining agent of the applicant, whether at any operation of the Company or elsewere, or

[14] (2) any strike, slowdown, work stoppage, picketing or concerted action at any operation of the Company, or of any labor dispute of any kind involving persons employed by the Company, when such action interferes with production or the ingress or egress of material or product at the operation where the layoff occurs, or

(3) any strike, slowdown, work stoppage, picketing or concerted action or any labor dispute of any kind involving persons employed by transportation or utility companies which directly interferes with production or the in-

gress or egress of material or product at the operation where the layoff occurs, or

d. His unemployment was the result of a refusal by him to accept assignment to any work at the operation where he was employed or at any other operation of the Company if it is work which he would be required to accept under any applicable labor agreement.

Waiting Weeks

3.6 Most states impose a "waiting week" for which no state unemployment benefit is paid. No Weekly Benefit will be paid for such a week, since in order to qualify for a Weekly Benefit, an employee must, under 3.0b., receive a state unemployment benefit or fail to receive that benefit for one or more of certain specified reasons. Should the parties determine that a second waiting week in a benefit year has been hereafter imposed in any state, an employee will, if otherwise eligible, receive a Weekly Benefit for that week.

Effect of Vacations

3.7 An employee may receive a Weekly Benefit only if he was not scheduled to be, or was not on, paid vacation; provided that if a layoff coincides in part or in whole with a scheduled vacation period, an employee will be considered to be on layoff only for any [15] part of such period with respect to which he is not entitled to receive vacation pay.

Ineligibility

3.8 a. An employee may not receive a Weekly Benefit for any week:

(1) For which he claims and is eligible for sickness and accident or total disability benefit (except as provided in 3.1) whether it is publicly or privately financed or a pension or retirement benefit financed in whole or in part by the Company, or

(2) When he is in the military service, including training encampments.

b. An employee may not receive a Weekly Benefit for any week when his layoff was the result of:

(1) Any war or hostile action of a foreign power, or

(2) Government regulations or control, over amount or kind of material or product which the Company may use or sell, or

(3) Sabotage or insurrection.

c. An employee may not receive a Weekly Benefit for any week of layoff which is the result of an Act of God after the first two weeks of layoff resulting from such cause.

3.9 If an employee fails to take all steps necessary to become eligible for a Weekly Benefit within 6 months of the date the application is made, the application shall thereupon become void unless the reason for failure to complete such steps in such time is a pending dispute concerning a state unemployment benefit determination or is the fault of the Company.

Meaning of "on Layoff"

3.10 For the purposes of the Plan, an employee is "on layoff" for any week in which, because of lack of work, he does not work at all for the Company.

[16] 4. SHORT WEEK BENEFITS

Eligibility

4.0 An employee (other than a salaried employee who is guaranteed compensation for a minimum number of hours per week or per pay period) having two or more years of continuous service at or before the end of the week in question will receive a Short Week Benefit for any week in which some, but less than 32, hours are worked for the Company, unless the sum of the hours described in 4.3 equals or exceeds 32.

4.1 Each day of jury or witness duty, funeral leave or annual military encampment, for which an allowance is payable by the Company, shall be deemed to be eight hours worked.

4.2 If an employee whose regular turn ends at the end of a payroll week is required to work beyond the end of the turn for four hours or less, such hours will be considered as worked in the payroll week in which his regular turn falls rather than in the next payroll week. If an employee whose regular turn starts at the beginning of a payroll week is required to report four hours or less before the beginning of the turn, such hours will be considered as worked in the payroll week in which his regular turn falls rather than in the preceding payroll week.

Benefit Amount

4.3 A Short Week Benefit for a particular week will be calculated by multiplying the employee's standard hourly wage rate (the wage rate applicable to hours worked on a nonincentive job) by the excess of 32 hours over the sum of the hours:

a. He worked in the week,

b. He did not work but for which he was paid by the Company.

c. He did not work for reasons other than lack of work, and

d. He did not work for the reasons specified in 3.5a., b., or c.

4.4 [17] For the purposes of 4.3, the employee's standard hourly wage rate will be the average such rate in the week for which the Short Week Benefit is paid.

4.5 An employee will be deemed to have received pay for an unworked Holiday if he failed to receive such pay and his failure to receive it was solely for reasons other than work not having been performed in the appropriate pay period or periods.

4.6 For any week (seven consecutive days) of vacation overlapping two payroll weeks, the employee will be deemed to have been paid for hours equal to one-fifth of the hours of vacation pay for that week on each of the first five days of that week.

4.7 If the employee applies for a state unemployment benefit for any portion of the week, he must notify

the Company of such application and of the total amount of any such benefit received. One-seventh of the amount of such state unemployment benefit will be deducted from the amount calculated in accordance with 4.3 for each day of the state benefit week which falls within the payroll week for which the Short Week Benefit is paid.

4.8 The reduction table in 1.5 shall apply to Short Week Benefits.

Payment of Benefit

4.9 A Short Week Benefit will be paid to the employee, without application by him, for any week for which he qualifies.

Cancellation of Credit Units

4.10 One-half credit unit will be cancelled for each Short Week Benefit except that seven-tenths of a credit unit will be cancelled in the case of an employee who is employed on a Great Lakes vessel.

4.11 If an employee willfully falsifies, or willfully withholds, any records or other data on which his Short Week Benefit payments are based, the Company may cancel any or all of his credit units.

[18] 5. FINANCING AND ADMINISTRATION

5.0 All Benefits are provided solely out of the Fund. The Company's obligation to contribute to the Fund, for the provision of Benefits, is established by agreements with unions representing employees covered by the Plan. The details concerning the Company's obligation, including the maximum obligation incurred for each hour worked by a covered employee and the level of finances established for the provision of Benefits, are contained in the agreement between the Company and the union representing the majority of covered employees.

5.1 Under the agreements referred to, a relationship is determined, for each benefit month, between the level of financing established for the provision of Benefits and the actual financing (the Fund and the

accumulated Company obligation) then available. That relationship, expressed as a percentage, is the financial position of the Plan, used for the determination required by 1.5.

5.2 Any amount of Company obligation arising under the agreements referred to shall remain as an obligation of the Company for the purpose of providing Benefits, unless reduced, pursuant to the agreement with the union representing the majority of covered employees, because of the provision of other benefits for employees.

5.3 The Company shall administer the Plan. The Company's procedures and regulations shall be in accordance with and subject to the terms and provisions of the Plan. The costs of administering the Plan shall be borne by the Company and shall not be paid from the Fund.

6. DISPUTES

6.0 If an employee disagrees with any determination relating to his eligibility to a Benefit or the amount thereof, he should discuss the matter with a Company representative at the office at which [19] he applies for Benefits. If the dispute is not resolved by that discussion, he must file an SUB grievance (or a written request for review if he is not in a bargaining unit) on a form provided by the Company, within 30 days of the notice of denial or Benefit payment to which the disagreement applies or within 60 days of the end of any week as to which eligibility for a Short Week Benefit is in dispute. If he does not file such a grievance (or request), the original determination will be final and conclusive.

6.1 Even though the determination with which an employee disagrees may apply to more than one week, he should continue to report and apply for each week as to which he claims a Weekly Benefit but he need not file repetitious greivances (or requests for review).

6.2 If an employee's eligibility to a Weekly Benefit depends on his eligibility to a state unemployment benefit and his eligibility to a state unemployment

benefit is in dispute, the determination of his eligibility for the Weekly Benefit will be postponed until the question is resolved under the state system. At that time a retroactive determination will be made to place him in the same position as he would be in if the determination could have been made promptly upon his application. Nevertheless, he must continue to report and apply each week for which he claims a Weekly Benefit. While the dispute is pending, his credit unit balance and the Fund balance will be treated as though the Weekly Benefit had been paid.

7. MISCELLANEOUS

Coverage

7.0 An employee is covered by the SUB Plan only if he is in a group of employees of the Company who are designated for such coverage. An employee cannot receive any Weekly Benefit or relocation allowance unless he is covered by the Plan at the time his layoff [20] commences and cannot receive a Short Week Benefit unless he is covered by the Plan in the week in question.

Relocation Allowance

7.1 Relocation allowances shall be payable under the Plan in accordance with the eligibility provisions contained in applicable labor agreements.

Military Service

7.2 If an employee enters the armed services directly from the employment of the Company, he shall, while in service, be deemed for the purposes of the Plan to be on leave of absence and shall not be entitled to any Benefit. Only the credit units credited to him at the time of his entry into such service shall be credited to him upon his reinstatement as an employee of the Company with unbroken continuous service, except as may otherwise be required by law.

Nonduplication

7.3 An employee is not eligible to receive a Weekly or Short Week Benefit if he receives, or is eligible to re-

ceive, a similar benefit under an arrangement provided by an employer with whom he has more service than with the Company.

Tax Withholding

7.4 Any Benefit an employee is entitled to receive will have deducted from it any amount the Company is required to withhold by reason of any law or regulation of any federal, state or municipal government. Current rulings of the Internal Revenue Service do not require withholding of federal income tax from a Benefit but they do require that Weekly and Short Week Benefits be reported as income on the employee's annual income tax return.

Non-alienation

7.5 No Benefit shall be subject in any way to alienation, sale, transfer, assignment, pledge, attachment, garnishment, execution, or encumbrance [21] of any kind, and any attempt to accomplish the same shall be void. If the Company shall find that such an attempt has been made with respect to any Benefit due or to become due to an employee the Company in its sole discretion may terminate his interest in such Benefit and apply the amount of such Benefit to or for the benefit of him, his spouse, parents, children or other relatives or dependents, as the Company may determine, and any such application shall be a complete discharge of all liability with respect to such Benefit.

Death or Incapacity

7.6 Except as provided in 7.5 any Benefits to which an employee may become entitled shall be payable only to him, except that if, after becoming entitled to Benefits but before they are paid, he dies or becomes unable to manage his affairs for any reason, any Benefits then payable to him shall be paid to his duly appointed legal representative, if there be one, and, if not, to his spouse, parents, children, other relatives or dependents or, if there are none such, to his creditors, as the Company in its discretion may determine. Any payment so made shall be a complete discharge of any liability with respect to such Benefit. In the case of an employee's death, no Weekly Benefit

shall be payable with respect to any period following the last full week of layoff immediately preceding his death.

Effect on Other Rights

7.7 When an employee receives Benefits under the Plan he shall not by reason thereof be deemed to be working for the Company during such period, nor shall he by reason thereof receive benefits under any other benefit plan to which the Company contributes other than those to which he would be entitled if he were not receiving Benefits.

An employee's rights and the Company's right to discharge him shall not be enlarged or affected by reason of the Plan. Nothing [22] contained in the Plan shall be deemed to enlarge, qualify, limit, or alter in any manner the Company's management responsibilities.

Finality of Determination

7.8 The Company shall have the right to recover overpayments for the Fund and correct underpayments to employees. However, any benefit determination shall become final six months after the date on which it is made if (a) no dispute is then pending, and (b) the Company has not theretofore given notice in writing of an error. The foregoing shall not be construed to prevent the Company from making a new benefit determination when it learns of facts of which it did not have and could not have had knowledge at the time of a prior benefit determination or in a case as to which the prior benefit determination was the result of information fraudulently furnished or withheld by the employee.

Part-Time Employees

7.9 a. The calculation provided in 1.0 will be made by use of a number in place of 26 which bears the same relation to 26 as the number of hours in his normal work week bears to 40, and

b. There shall be substituted for the number 32 wherever it appears in 4.0 and 4.3 a number equal to 80% of the number of regular weekly hours of work of such employee.

Receipt of State Unemployment Benefit

7.10 Following are examples of methods which may be used by an employee to prove receipt of a state unemployment benefit:

a. A state unemployment benefit check, or in California, a cash payment receipt issued by the state system agency.

b. A form satisfactory to the Company issued by the state system agency.

[23] c. In states which do not furnish a form as provided in b. but which do provide the Company with a current and itemized account of unemployment benefits paid and charged to the Company's experience rating account under the state system, the employee's signed statement under information provided on the application showing:

(1) The amount of state unemployment benefit paid.

(2) The week ending date or other identification of the week covered by the state unemployment benefit payment.

(3) The date of the state unemployment benefit check.

(4) The number of the check covering the state unemployment benefit payment.

This can be used only if, under the state system and with respect to the state unemployment benefit in question, the accounting for benefits paid and charged to the Company experience rating account under the state system is provided on a reasonably current basis and shows each benefit payment as a separate item, identifies the employee receiving the payment, and shows the amount paid and the week ending date or other identification of the week covered by the payment.

d. In instances where there is no form as provided in b. or where there is no current and itemized accounting of benefits paid, as outlined in c., or, in the Company's discretion, as an alternate to c., the following evidence may be used:

(1) A photostat copy of the state check; or

(2) A certification by a Notary Public, verifying the receipt of a state unemployment benefit.

e. The above list is illustrative and is not intended to exclude other local arrangements which reasonably provide for securing proof.

[24] *Coinciding Weeks*

7.11 a. For any week which does not constitute a payroll week and as to which an employee fails to qualify for a Weekly Benefit solely because there are days in that week which coincide with days in a payroll week and (1) he worked on one or more such coinciding days or (2) he is entitled to a Short Week Benefit for such payroll week, he will receive a Weekly Benefit as set forth in b. and c.

b. For the purposes of a. and subject to c., the Weekly Benefit will be calculated in the normal manner; i.e., all compensation applicable to the week shall be regarded as other compensation and the state unemployment benefit paid for the week will be deducted irrespective of the fact that some or all of the compensation may be applicable to the payroll week or that some portion of the state unemployment benefit may be deducted from a Short Week Benefit.

c. In any case covered by a. in which the employee worked or was paid for a total of less than 32 hours in the payroll week, the Weekly Benefit shall be reduced by one-seventh for each day of the week which coincides with a day of the payroll week.

COLLECTIVE BARGAINING AGREEMENT
between REPUBLIC STEEL
CORPORATION and
UNITED STEELWORKERS UNION

ARTICLE TEN—SENIORITY

ARTICLE TEN—SENIORITY

SECTION 1—PROMOTIONS AND LAYOFFS

The parties recognize that promotional opportunity and job security in event of promotions, decrease of forces, and recalls after layoffs should increase in proportion to length of continuous service, and that in the administration of this Section the intent will be that wherever practicable full consideration shall be given continuous service in such cases.

In recognition, however, of the responsibility of Management for the efficient operation of the plants, it is understood and agreed that in all cases of:

(a) promotion (except promotions to positions excluded from the bargaining unit set forth in this Agreement), the following factors as listed below shall be considered; however, only where factors (a) and (b) are relatively equal, shall length of continuous service be the determining factor:

(a) ability to perform the work;

(b) physical fitness;

(c) continuous service.

(b) decrease in forces or recalls after layoffs, the following factors as listed below shall be considered; however, only where both factors (a) and (b) are relatively equal, shall continuous service be the determining factor:

(a) ability to perform the work:

(b) physical fitness;

(c) continuous service.

Nothing in this Section shall prevent Plant Management and the Grievance Committee from mutually agreeing to fill an equal or lower job in a promotional sequence with a senior Employee; nor from executing an agreement in writing to provide an opportunity to any Employee displaced in the course of a reduction of forces from exercising his seniority to the extent appropriate to obtain a job paying higher earnings; provided such Employee is otherwise qualified with respect to relative ability to perform the work and relative physical fitness as provided above. Plant Management and the Grievance Committee may mutually agree to provide

training for Employees disabled in the plant and to assign them to vacancies for which they are qualified on the basis of such seniority arrangements as they may determine.

SECTION 2—UNITS

Seniority units, job progression and regression charts and rules and regulations governing their application, to which the factors referred to in Section 1 of this Article Ten shall be applied, have been mutually agreed upon by Plant Management and the Grievance Committee at many of the plants. Such agreements shall remain in effect unless and until modified by local written agreement signed by Management and the Chairman and Secretary of the Grievance Committee of the Local Union. Hereafter, local seniority agreements, including agreements covering departments or units thereof, shall be signed on behalf of the Union by the Chairman and Secretary of the Grievance Committee of the Local Union, and shall be posted in the plant.

In any case in which local agreement cannot be consummated as to the seniority unit in which a new job or new jobs, including those in new, merged or transferred operations, are to be placed, Management shall include such job or jobs in the most appropriate seniority unit or, if more appropriate, establish a new seniority unit, subject to the complaint and grievance procedure of this Agreement.

SECTION 3—CONTINUOUS SERVICE RECORD

The continuous service record of any Employee shall be determined as follows:

(a) Each present Employee shall have such continuous service record as is shown on the employment records of the Company for such Employee, and he shall accumulate additional continuous service in accordance with Subparagraph (c) below, until his continuous service record shall be broken in which event his continuous service record shall end and be cancelled. All continuous service dates posted pursuant to Section 3 of Article Eleven—Seniority—of the April 30, 1947 Agreement and about which no grievance was filed as therein provided shall continue to be conclusively considered as correct.

(b) Each new Employee and each person rehired after the cancellation of his continuous service record shall accumulate continuous service from the date of such hiring or rehiring, as the case may be, in accordance with Subparagraph (c) below, until his continuous service record is broken, in which event his continuous service record shall end and be cancelled.

(c) The rules for determining a break in a continuous service record, which were first adopted at each separate unit on the date of its first labor agreement and as subsequently amended in the respective labor agreements since that time, and which shall have no application at each separate unit prior to that respective time, shall continue to be used to determine the occurrence of a break in a continuous service record prior to August 1, 1968. From August 1, 1968, forward, the following rules shall be used to determine a break in a continuous service record:

(1) Voluntarily quitting the service;

(2) Discharge from the service, provided that if the Employee is rehired within 6 months the break in continuous service shall be removed;

(3) Termination in accordance with Article Fourteen—Severance Allowance;

(4) Absence in excess of 2 years, except as provided in Subparagraph (5) below; or

(5) Absence due either to layoff or physical disability, or both, which continues beyond the period specified in this Subparagraph (c)(5). If an Employee is absent because of layoff or nonoccupational physical disability, or both, in excess of two years, he shall continue to accumulate continuous service during such absence for an additional period equal to (i) 3 years, or (ii) the excess, if any, of his length of continuous service at commencement of such absence over 2 years, whichever is less. Any accumulation in excess of 2 years during such absence shall be counted, however, only for purposes of this Article Ten, including local agreements thereunder, and shall not be counted for any other purpose under this or any other agreement between the Company and the International Union. In order to avoid a break in service within the above period after an absence in excess of 2 years, an Employee absent

because of layoff or nonoccupational physical disability, or both, must report for work promptly upon termination of either cause, provided, in the case of layoff, the Company has mailed a recall notice to the last address furnished to the Company by the Employee. An Employee absent because of a compensable disability incurred during the course of employment shall accumulate continuous service, provided such person is returned to work within 30 calendar days after the end of the period for which he is unemployed and for which workmen's compensation is payable to him.

SECTION 4— PROBATIONARY EMPLOYEES

New Employees and those hired after a break in continuity of service will be regarded as probationary Employees for the first 260 hours of actual work and will receive no continuous service credit during such period. Probationary Employees may initiate complaints under this Agreement but may be laid off or discharged as exclusively determined by Management. Probationary Employees continued in the service of the Company subsequent to the first 260 hours of actual work shall receive full continuous service credit from date of original hiring.

SECTION 5— INTERPLANT AND INTRAPLANT TRANSFERS

It is recognized that conflicting seniority claims among Employees may arise when plant or department facilities are created, expanded, added, merged, or discontinued, involving the possible transfer of Employees. It is agreed that such claims are matters for which adjustment shall be sought between Management and the appropriate grievance representatives or committees.

In the event the above procedure does not result in agreement, the International Union and the Company may work out such agreements as they deem appropriate irrespective of existing seniority agreements or may submit the matter to arbitration under such conditions, procedures, guides and stipulations as to which they may mutually agree.

SECTION 6—TEMPORARY VACANCIES

In the case of a temporary vacancy exceeding 5 days involving temporary reassignment of Employees within a

seniority unit, the Company shall, to the greatest degree consistent with efficiency of the operation and safety of Employees, fill such vacancy by assigning thereto the Employee whose continuous service or progression chart standing entitles him to the next consideration for promotion to such job. Any time spent in filling such temporary vacancy of 5 days or less shall not be used to the detriment of himself or of other Employees when making a selection to fill a permanent vacancy.

SECTION 7—DISTRIBUTION OF WORK

In the event a decrease of work, other than decreases which may occur from day to day, results in the reduction to an average of 32 hours per week for the Employees in the seniority unit and a further decrease of work appears imminent, which in the Company's judgment may continue for an extended period and will necessitate a decrease of force or a reduction in hours worked for such Employees below an average of 32 hours per week, the Management of the plant and the Grievance Committee will confer in an attempt to agree as to whether a decrease of force shall be effected in accordance with this Article Ten or the available hours of work shall be distributed as equally among such Employees as is practicable with due regard for the particular skills and abilities required to perform the available work. In the event of disagreement, Management shall not divide the work on a basis of less than 32 hours per week.

SECTION 8—FILLING OF VACANCIES

When a vacancy (other than a temporary vacancy) develops, or is expected to develop, in the promotional line in any seniority unit, Management shall, to the greatest degree practicable, post notice of such vacancy or expected vacancy, or job assignments where such is the present practice, for such period of time, in such manner, and at such places as may be appropriate at each plant.

Employees in the seniority unit who wish to apply for such vacancy or expected vacancy may do so in writing in accordance with rules developed by Management at each plant.

Management shall, if in its judgment there are applicants qualified for such vacancy or expected vacancy, fill same from among such applicants in accordance with the provisions of Sections 1 and 2 of this Article Ten.

SECTION 9—UNION OFFICERS

When Management decides that the work force in any seniority unit in any plant is to be reduced, the member of the plant Grievance Committee, if any, in that unit shall, if the reduction in force continues to the point at which he would otherwise be laid off, be retained at work and for such hours per week as may be scheduled in the work area in which he is employed, provided he can perform the work of the job to which he must be demoted. The intent of this provision is to retain in active employment the plant grievance committeemen for the purpose of continuity in the administration of the labor agreement in the interest of Employees so long as a work force is at work; provided that no grievance committeeman shall be retained in employment unless work which he can perform is available to him in the designated work area which he represents. The Local Union shall designate and advise the Company of such area of representation.

This provision shall apply also to Employees who hold any of the following offices in the Local Union or Unions in which the Employees of the plant are members: President, Vice President, Recording Secretary, Financial Secretary, and Treasurer.

SECTION 10—LEAVES FOR UNION BUSINESS

Leaves of absence for the purpose of accepting positions with the International or Local Unions shall be available to a reasonable number of Employees. Adequate notice of intent to apply for leave shall be afforded local Plant Management to enable proper provision to be made to fill the job to be vacated.

Leaves of absence shall be for a period not in excess of one year and may be renewed for a further period of one year.

Continuous service shall not be broken by the leave of absence but will continue to accrue.

SECTION 11—CONTINUOUS SERVICE LISTS

The Company shall make available to the Local Union concerned lists showing the relative continuous service of each Employee in each seniority unit. Such lists shall be revised by the Company from time to time, as necessary, but at least every 6 months, to keep them reasonably up to date. Except

as provided in Section 3 of this Article Ten, the seniority rights of individual Employees shall in no way be prejudiced by errors, inaccuracies, or omissions in such lists.

SECTION 12—SENIORITY POOLS

A. Purpose

The purpose of this Section 12 is to increase intraplant job security for longer-service Employees. The application of seniority provisions other than those established under this Section 12 to jobs in a seniority unit shall not be affected by the inclusion of such jobs in the pool except to the extent necessary to comply with the provisions of this Section 12.

B. Establishment of Seniority Pools

It is the objective of the parties that there shall be at each plant the minimum number of seniority pools as described below consistent with the efficient operation of the plant. As a minimum, the agreed upon area covering a single seniority pool in each case shall be as broad as practicable and in no event shall be less than a major operating unit such as Blast Furnace, Coke Plant, Open Hearth, etc.; however, rolling facilities need not necessarily be considered as one unit but shall nevertheless be as broad as practicable. For manufacturing plants the area shall be as broad as practicable but shall in no event be less than a substantial portion of a plant.

Each seniority pool within an agreed upon area as established or revised pursuant to the above objectives shall be regarded as being a single seniority pool for the purposes of layoff and recall. Each such pool shall be made up of all jobs in Job Classes 1, 2, and 3, and such jobs in Job Class 4 or higher as shall be agreed upon by the local parties. The number of jobs in Job Class 4 or higher to be included in the pool shall be no less than two-thirds of the total number of Job Class 4 jobs in the agreed upon area. The job opportunities provided by the jobs in Job Class 4 or higher included in the pool as of the pay period including the 90th day after the effective date of this Agreement shall be approximately two-thirds of the job opportunities provided by all Job Class 4 jobs in the agreed upon area as of such date. If a particular job required to be included in the pool by the

foregoing provisions is inappropriate for inclusion in the pool, the local parties may agree to remove it from the pool provided that another suitable job (or jobs) is concurrently added to the pool which does not reduce significantly the number of job opportunities provided by the job which was removed from the pool. The jobs in the pool shall also be included in appropriate seniority units for the application of seniority provisions other than those included in this Section 12.

C. Operation of a Seniority Pool

An Employee who, at the time he is or otherwise would be laid off, has 2 or more years of plant continuous service shall be assigned to a job for which he is qualified in his seniority pool, if a job in his seniority pool is held by an Employee having less plant continuous service; provided, however, that Management shall not be required to assign him to any such job before the expiration of 30 days (or such shorter period as may have been heretofore agreed upon by the local parties) after the date of his layoff. In filling other than temporary vacancies in jobs in any seniority pool, Management will recall Employees laid off from the seniority units covered by the pool in the order of their plant continuous service; however, the Employee must be qualified to perform the job. Where practicable, however, Management will make a reasonable effort to assign, on the basis of plant continuous service, an Employee laid off from his seniority unit to a pool job he prefers which is not held by an Employee with unit service. However, Management shall have the right, to the extent necessary, to designate the specific job in any pool to which an Employee shall be assigned (and to change such assignments) in order to provide jobs for longer-service Employees who would otherwise be unable to qualify for an available job in the pool. In order to maintain efficiency, Management need not assign laid off Employees to a job in any operating or service unit where such assignment would result in less than the required minimum of experienced Employees in such unit. The local parties may by agreement determine whether there are circumstances under which an Employee need not accept a pool job.

D. Operation of Multiple Seniority Pools

In a plant in which there is established more than one

agreed upon area as defined in Subsection B above, the following shall apply:

In the event of a permanent shutdown of a facility as defined in Article Fourteen—Severance Allowance—or layoff of one or more Employees for a period which extends for 6 months or more or which the parties believe will extend for such a period, an Employee affected who has 2 or more years of plant continuous service at time of layoff shall be given the right to a job in any seniority pool in the plant if a job in that pool is held by an Employee with less plant service provided he is qualified to perform the job. Such assignments to jobs shall be subject to the same rules as apply in Subsection C above. An Employee who has been assigned to a job in a different seniority pool under this provision and who has been subsequently laid off from that pool shall have recall rights to that pool until he is recalled to a job in the agreed upon area from which he was originally laid off; provided, however, that such recall rights shall be limited to his own pool and the last pool from which he was laid off; and provided, further, that the Company shall not be required under this Subsection D to displace a shorter service Employee with such laid off Employee before the expiration of 30 days after the date of any such layoff.

E. Unit Seniority

An Employee who is assigned to a pool job in a different seniority unit pursuant to Subsections C or D above shall accrue unit service in that seniority unit as well as in his regular seniority unit provided that such unit service will be cancelled when he is recalled to his regular seniority unit or when he is reassigned to another seniority unit; and provided, further, that such Employee, to be eligible for advancement to a job above the pool in the unit to which he is assigned pursuant to Subsections C or D above, shall have the same qualifications as are required for transfer pursuant to the provisions of Section 15, Subparagraph (b), of this Article Ten.

F. Miscellaneous

(1) Employees shall be recalled directly to jobs in their seniority units or promotional sequences above the seniority pool, if that is in accord with applicable seniority practices or agreements.

(2) If the Company recalls the wrong Employee from a layoff to a job in a pool, it will not be liable for any retroactive pay to the Employee who should have been recalled with respect to any period prior to 4 days or the beginning of the workweek, whichever is later, after receipt by the Company of specific written notice by him (on a form to be provided therefor) of its alleged error.

(3) If the local parties deem it helpful in facilitating the assignment of Employees in the pool, they are empowered to agree in writing that schedule changes arising from movements of Employees into, within or out of the seniority pools in accordance with the provisions of the Section 12 shall be deemed not to be, even though it otherwise would be, a violation of the provisions relating to schedule changes and shall not provide a basis for a claim for sixth or seventh day overtime compensation or reporting allowance.

SECTION 13—INTERPLANT JOB OPPORTUNITIES

A. An Employee of a steel plant or of a manufacturing plant continuously on layoff for 60 days or more who had 2 or more years of Company continuous service on the date of his layoff and who is not eligible for an immediate pension and social security shall be given priority over other applicants (new hires, including Employees with 60 days or less service) for job vacancies (other than temporary vacancies) at other steel or manufacturing plants of the Company located within limited agreed upon geographical regions (hereinafter referred to as "region") and covered by an agreement between the Company and the International Union, all in accordance with the following:

(1) The plants within each such agreed region are set forth in Appendix C to this Agreement.

(2) The job vacancies for which Employees shall be eligible under these provisions shall be only those that are not filled from the particular plant in accordance with the provisions of this Article Ten.

(3) An Employee shall be given such priority only if he files with the Management of the plant from which he is laid off a written request for such employment

specifying the other plant or plants at which he would accept employment. Such application shall be on a form provided by the Company.

(4) Employees who thus apply may thereafter be given priority in the filling of job vacancies (other than temporary vacancies) over new hires, and after they have been continuously on layoff for 60 days and have had an application on file for 30 days shall be given such priority in the order of their Company continuous service (the earliest date of birth to control where such service is identical), in each case provided such Employees have the necessary qualifications to advance in the promotional sequence involved. In determining the necessary qualifications to advance in the promotional sequence involved the normal experience acquired by Employees in such sequence shall be taken into consideration. It is recognized that there are circumstances under which it is impractical to afford such priority to an applicant because of the imminence of his recall to his home plant. In such a case, the Company shall not incur liability for failure to give priority to such applicant, if the period does not exceed two weeks or such longer period as may be agreed to by the Employee. An Employee who is otherwise eligible for employment shall not be required to meet higher medical qualifications at another plant than would have been required of him upon recall at his home plant.

(5) An Employee laid off from one plant who is offered and who accepts a job at another plant in accordance with the foregoing provisions will have the same obligation to report for work there as though he were a laid off Employee at that plant. During his employment at that plant he will be subject to all the rules and conditions of employment in effect at that plant. He will be considered as a new Employee at that plant for all purposes except that the provisions of Section 4 of this Article Ten will not be applicable, and his plant continuous service for determining his seniority for purposes of promotion, decrease in forces, or recalls after layoff at that plant shall be no less than his continuous employment at that plant plus 60 days. At any time during the first 30 days of his employment at that plant he may elect to termi-

nate such employment without affecting his continuous service at his home plant provided he gives reasonable notice to Plant Managment and provided further that such an election will affect his right to further consideration under this Section 13 in the same manner as if he had rejected a job offered to him. If he is laid off from that plant his continuous service at that plant will be cancelled when he is recalled to his home plant, subject to the provisions of Subparagraph (7) below, or when he is employed at any other plant of the Company. If his home plant is closed permanently, his continuous service at that plant will be cancelled and the plant to which he was assigned will become his home plant, subject to the election provided in the following sentence. If his home plant is closed permanently or if his home plant department or substantial portion thereof is permanently discontinued, and the Employee has less than two years of continuous service for layoff purposes at the new plant and meets the eligibility requirements for severance allowance, he may elect within 90 days of such closing or discontinuance to be assigned back to his former home plant for the purpose of receiving severance pay and thus terminating his continuous service with the Company for all purposes under this Agreement.

(6) If an Employee rejects a job offered to him under these provisions, or if he does not respond within 5 days of the time the offer is made, directed to his last place of residence as shown on the written request referred to in Subparagraph (3) above, his name shall be removed from those eligible for priority hereunder, and he may thereafter apply, pursuant to Subparagraph (3) above, for reinstatement; provided, however, that he shall be entitled to only one such reinstatement during the period of one year after such unaccepted offer unless he is recalled to active employment and again laid off during the one-year period after such unaccepted offer.

(7) An Employee who accepts employment at another plant under these provisions will continue to accrue continuous service for seniority purposes at his home plant in accordance with the applicable seniority rules. If he is recalled to work at his home plant:

(a) He shall have an option to stay or return unless Management directs him to return, in which event his continuous service will continue to accrue for seniority purposes at the other plant until the expiration of one of the following applicable periods if he has not returned to employment at the other plant by that time.

The periods are as follows:

If recalled to a Job Class 10 or below job at his home plant, 6 months;

If recalled to a Job Class 11 through 18 job at his home plant, one year;

If recalled to a Job Class 19 or above job at his home plant, 1½ years;

If promoted to a higher job classification after his recall to his home plant, any longer period of seniority accrual at the other plant as determined by one of the periods above shall apply as of the date of his initial recall to the home plant;

at the expiration of which period it will be cancelled if he has not returned to employment at the other plant. At any time within the period specified above, Management at the home plant may give the Employee the option of returning to the other plant. If the Employee elects to return to the other plant, his continuous service at his home plant shall be cancelled.

(b) If Management makes his return to his home plant optional and he elects to return, his continuous service for seniority purposes at the other plant will be cancelled.

(c) If Managment makes his return to his home plant optional and he elects to remain at the other plant, his continuous service for seniority purposes at his home plant will be cancelled.

(8) When an Employee is recalled to his home plant from another plant, and Management at such other plant has sound reason for not immediately releas-

ing such Employee, the Employee may be retained at such other plant without penalty for the calendar week following the calendar week in which such recall occurs. If the Employee is retained beyond this period for the convenience of Management at such other plant, he shall receive in addition to pay for the job performed, such special allowance as may be required to equal the earnings that otherwise would have been realized by the Employee on the job to which he was recalled by his home plant.

B. Priority in the filling of job vacancies (other than temporary vacancies) in steel plants or manufacturing plants in areas covering more than one region shall be afforded Employees in such plants in accordance with the following:

(1) Such priority shall be afforded to Employees who have applied for employment in the region from which laid off and Management has failed to provide employment and:

(a) Who have 2 or more years of Company continuous service at the date of shutdown and who (i) have elected not later than the end of 30 days from the date of shutdown to continue on layoff and (ii) cannot qualify for immediate pension and have not attained the age of 60 and (iii) have no employment and no recall rights to a job in the plant or in a regional plant in which they have been employed as a result of a permanent shutdown of a plant, department, or subdivision thereof and (iv) have applied for employment hereunder, or

(b) Who have 2 or more years of Company continuous service at the time of layoff from their plant and (i) in the opinion of Management are not likely to be returned to active employment in their plant or in a regional plant within one year from the date of layoff and (ii) cannot qualify for immediate pension and have not attained the age of 60 and (iii) within 30 days after being advised by Management of such option apply for employment hereunder.

(2) The plants within each such agreed interregional area are set forth in Appendix C to this Agreement.

(3) The job vacancies for which Employees shall be eligible under these provisions shall be only those that are not filled from the particular plant or the particular region in accordance with this Section 13 and the foregoing Sections of this Article Ten.

(4) In filling such job vacancies hereunder, the provisions of Subparagraphs (3), (4), (5), (6) and (7) of Subsection A of this Section 13 shall be applicable, except that the following additional provisions shall be applicable to an Employee assigned to another plant under the provisions of this Subsection B:

(a) He may, at any time during the first 6 months of his employment at that plant (or during a period of layoff in the first year of such employment), elect to terminate such employment without breaking his continuous service at his home plant, provided he gives two weeks' notice to Plant Management. If he does so elect to return to his home plant, he will not be eligible for a relocation allowance for such return.

(b) When he has completed one year of employment at that plant, his continuous service at his home plant will be cancelled and the plant to which he was assigned will then become his home plant.

(5) An Employee who is assigned a job under this Subsection B or Subsection A of this Section 13 in a plant at least 50 miles from the plant from which he was laid off and who changes his permanent residence as a result thereof will receive a relocation allowance promptly after the commencement of his employment at the plant to which he is relocated, in the following terms:

(a) He must make written request for such allowance in accordance with the procedure established by the Company.

(b) The amount of the relocation allowance will be determined in accordance with the following:

Miles Between Plant Locations	Allowance for Single Employees	Allowance for Married Employees
50- 99	$130	$380
100- 299	150	420
300- 499	180	490
500- 999	230	620
1,000-1,999	290	780
2,000 or more	350	940

(c) The amount of any such relocation allowance will be reduced by the amount of any relocation allowance or its equivalent to which the employee may be entitled under any present or future federal or state Legislation; and the amount of such allowance shall be deducted from monies owed by the Company in the form of pay, vacation benefits, SUB benefits, pensions or other benefits, if the Employee quits, except as it shall be agreed locally that the Employee had proper cause, or is discharged for cause any time during the 12 months following the start of such new job.

(d) Only one relocation allowance will be paid to the members of a family living in the same residence.

C. (1) The operation of this Section 13 will be subject to periodic review by a joint committee, consisting of equal numbers of representatives of both parties (not more than 3 each), who shall meet periodically to review the operation of this Section 13 and to consider and resolve any problems that may arise from its operation. The Company shall supply to such committee pertinent information relating to the operation of this Section 13.

(2) The following procedure shall apply only to complaints or grievances relating to the application of this Section 13:

(a) Any Employee who believes that he has a justifiable request or complaint shall promptly refer the matter to a Staff Representative designated by the Union for this purpose, who, in turn, will promptly arrange to discuss the request or complaint with the Company's designated representative.

(b) If not satisfactorily resolved, the Union's designated Staff Representative may refer the matter to the Company's Step 4 Representative certified to the Union by the Company to handle Step 4 grievances for the home plant of the complaining Employee, or, if appropriate, the Step 4 Representative for another plant involved in the complaint. Such referral shall be made in writing within 10 days of completion of the final discussion pursuant to Subparagraph (a) above and shall set forth the Union's statement of fact, the action of the Company which the Union challenges, the clause or clauses of this Section 13 which are alleged to be violated, the relief sought, and the Union's position. The appealed grievance shall be handled in the regular complaint and grievance procedure established under this Agreement starting at Step 4.

D. In order to facilitate the operation of the program provided for in this Section 13, it is agreed that (1) back pay shall not be awarded in any grievance based on those paragraphs unless the arbitrator finds that there has been willful and deliberate noncompliance therewith, and (2) the Company and the International Union may, upon recommendation of the committee provided for in Subsection C above, amend this Section 13 at any time during the period of this Agreement and that such amendment shall be effective with respect to any pending grievance.

E. The Company will not be liable for any retroactive pay with respect to any period prior to 4 days or the beginning of the workweek, whichever is later, after receipt by the Company of specific written notice (on a form to be provided therefor) of its alleged error.

F. By agreement between the Company and the International Union the provisions of this Section 13 may at any time be suspended and Employees who are working at other plants under these provisions may be laid off, if it becomes necessary to do so to provide employment for long-service Employees who are permanently displaced or for other valid reasons.

SECTION 14—MANNING OF NEW FACILITIES

A. In the manning of jobs on new facilities in existing plants, the jobs shall be filled by qualified Employees who apply for such jobs in the order of length of service from the following categories in the following order but subject to the other provisions of this Section 14:

(1) Employees displaced from any facility being replaced in the plant by the new faciliites;

(2) Employees being displaced as the result of the installation of the new facilities;

(3) Employees presently employed on like facilities in the plant;

(4) Employees presently on layoff from like facilities in the plant;

(5) Employees in the plant with 2 or more years of plant continuous service, provided that if sufficient qualified applicants from this source are not available, Management shall fill the remaining vacancies as it deems appropriate.

B. The local parties shall meet to seek agreement on whether the length of service considered shall be plant service, department service, unit service or job service, and on the standards to be used to determine the qualifications entitling Employees otherwise eligible to be assigned to the jobs in question. It shall be the objective of such meetings to reach agreements on manning which reflect the parties' mutual intent to facilitate efficient manning and preserve job security for longer service Employees.

C. Should the local parties fail to agree on the standards for determining qualifications, an applicant otherwise eligible shall have:

(1) The necessary qualifications for performing the job.

(2) The ability to absorb such training for the job as is to be offered and is necessary to enable the Employee to perform the job satisfactorily.

(3) The necessary qualifications to progress in the promotional sequence involved to the next higher job to the extent that Management needs Employees for such progression. In determining the necessary

qualifications to advance in the promotional sequence involved, the normal experience acquired by Employees in such sequence shall be taken into consideration. However, it is recognized that Management can require that a sufficient number of occupants of each job in a promotional sequence be available to assure an adequate number of qualified replacements for the next higher job.

D. An applicant who is disqualified under Subsection C above shall have the right to apply for another job for which he believes he can qualify.

E. When new facilities are to be manned pursuant to this Section 14, the local parties shall meet and may establish, in appropriate circumstances, rules for allowing an Employee not placed initially a second opportunity to elect transfer to the new facility consistent with its efficient operation. In establishing such rules, the local parties shall consider matters such as:

(1) The job level in the promotional sequence in the new unit up to which an Employee will be allowed a second opportunity to elect transfer.

(2) The continuous service date to be established for such Employee in the new unit.

(3) The date on which the second opportunity must be exercised following start-up of the new facility, but not more than 3 years thereafter. (In determining such date, the parties shall give due consideration to possible Management abandonment of the old facility or an extended period of its nonuse).

In lieu of or in addition to the foregoing, the local parties may develop a method for filling permanent vacancies in the new facility between the time of initial manning and the final election to transfer.

F. Should Management deem it necessary to assign an Employee to his regular job on the old facility in order to continue its efficient operation, it may do so on the basis of establishing such Employee on the new job and temporarily assigning him to his former job until a suitable replacement can be trained for the job or its performance is no longer required. In such event, such Employee shall be entitled to earnings not less than what he would have

made had he been working on the job on which he has been established.

G. Where new facilities replace facilities of more than one plant in the same general locality, appropriate representatives of the Company and the International Union shall meet in conjunction with the local parties for the purpose of seeking an agreement on manning consistent with the parties' mutual intent to facilitate efficient manning and preserve job security for longer-service Employees. In such situations, Company service may be considered in addition to plant service, department service, unit service, or job service.

SECTION 15—INTRAPLANT JOB OPPORTUNITIES

In order to increase intraplant job opportunities for longer-service Employees, all local seniority agreement provisions or rules relating to intraplant transfers not providing greater intraplant job opportunities are hereby modified as set forth below. It is recognized, however, that this Section 15 shall not be construed as a limitation on the right of the local parties to negotiate local agreements providing greater intraplant job opportunities at any time during the life of this Agreement.

(a) Any vacancy (other than a temporary vacancy) that is not filled in accordance with any other provision of this Agreement (except Section 13 of this Article Ten), including local seniority agreements, shall be made available to a qualified Employee, who has at least 6 months of plant continuous service, in any other seniority unit in the agreed upon area as established pursuant to Subsection B of Section 12 of this Article Ten, or in the plant in those cases where no agreed upon areas have been established. Vacancies shall be made available to such Employees in accordance with the seniority factors set forth in Section 1 of this Article Ten using plant continuous service.

(b) In a plant where there is more than one agreed upon area as established pursuant to Subsection B of Section 12 of this Article Ten, the following shall apply:

Any vacancy (other than a temporary vacancy) that is not filled in accordance with Subparagraph (a) above shall be made available to a qualified Employee in any other agreed upon area in the plant who has at least 1

year of plant continuous service. Vacancies shall be made available to such Employees in accordance with the seniority factors set forth in Section 1 of this Article Ten, using plant continuous service and subject to the following:

(1) An Employee must be qualified to perform the job.

(2) Management may require an Employee to have the necessary qualifications to progress in the promotional sequence involved to the next higher job to the extent that Management needs Employees for such progression. In determining the necessary qualifications to advance in the promotional sequence involved, the normal experience acquired by Employees in such sequence

Supreme Court of the United States

THOMAS E. COFFY, PETITIONER

v.

REPUBLIC STEEL CORP.

ORDER ALLOWING CERTIORARI. Filed October 29, 1979.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit is granted.